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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X BROOKLYN OFFICE

FATIMA MURSALOVA,

Plaintiff,

NOT FOR ELECTRONIC OR
PRINT PUBLICATION

- against -

MEMORANDUM AND ORDER

THE UNITED STATES,

13-CV-6226 (ARR)(SMG)

Defendant.

-----X
ROSS, United States District Judge:

Pro se plaintiff Fatima Mursalova filed the instant civil action on November 4, 2013. Plaintiff's request to proceed *in forma pauperis* is granted. The Caption is deemed amended to name the United States as a defendant. For the reasons that follow, plaintiff's claim shall proceed.

BACKGROUND

The following facts are derived from the complaint. Plaintiff states that she arrived as a new immigrant to the United States on September 17, 2012, on a flight arriving at JFK Airport. (Compl. at 1.) When she went through customs, she was taken to an immigration security room and ordered to leave her carry-on luggage outside of the room. (*Id.*) She told the officer that the luggage contained medication and \$5000 in cash and asked if it was safe to leave it there. (*Id.*) The officer told her that it was safe and that somebody would watch her bags. (*Id.*) She waited inside the room for four hours. (*Id.*) When she was permitted to leave the room, she discovered that the bag with the money was missing. (*Id.* at 2.) She filed two police reports about the missing bag. (*Id.*) One month later, JFK airport security informed plaintiff that the bag had been found; however, the cash was missing. (*Id.*) Plaintiff alleges that the missing cash was money

that her family needed to secure housing. As a result of losing the money, plaintiff's family was without a permanent home for three months. (Id.)

Plaintiff previously filed the same complaint in this Court on December 11, 2012.

Mursalova v. JFK Security Office, 12-CV-6136 (ARR)(SMG). Assistant United States Attorney Scott R. Landau appeared on behalf of the United States. By letter dated February 19, 2013, Mr. Landau suggested:

[T]he United States proposes that the Court schedule a conference to discuss the possibility of Plaintiff's dismissing the instant matter, without prejudice to refile, upon exhaustion of administrative remedies. At such a conference, the United States would provide Plaintiff with an SF-95 administrative tort claim form, as well as information regarding where and how to submit the form to [United States Department of Homeland Security, Customs and Border Protection]. If Plaintiff were to then timely file an administrative tort claim, the parties could potentially avoid unnecessary motion practice and litigation were this matter to be resolved at the administrative level.

Mursalova v. JFK Security Office, 12-CV-6136 (ARR)(SMG), ECF Entry #10, p. 3.

Subsequently, Mr. Landau and plaintiff appeared for a pre-motion conference before Chief Magistrate Judge Steven M. Gold on March 13, 2013, at which Mr. Landau provided a proposed stipulation of dismissal without prejudice. Id., ECF Entry #16. Plaintiff signed a stipulation of dismissal without prejudice that same day, and the action was dismissed without prejudice on March 14, 2013. Id., ECF Entry #17.

The instant complaint includes a copy of Standard Form 95 ("Claim for Damage, Injury, or Death"), dated March 13, 2013. (Compl., Exhibit, ECF p. 8.) In a hand-written addendum to the complaint, plaintiff states: "After 6 months of the first hearing I called the lawyer Mr. Landau that we didn't receive any letter from him, he answered that within 1 week we will have their letter. 1 week pass, we didn't get anything. We, me & my husband called him many times &

went to his office twice but he never appeared in the office & never answered on any of our phone call [*sic*].” (Compl. at 2.)

Plaintiff seeks damages of \$25,000: \$5000 to replace the stolen funds and \$20,000 for “moral compensation.” (*Id.*)

DISCUSSION

The Federal Tort Claims Act (“FTCA”) waives sovereign immunity and permits some suits for damages against the United States “for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). In order to bring a claim in federal district court pursuant to the FTCA, a claimant must name the United States as a defendant and must first exhaust administrative remedies within the federal agency. *See* 28 U.S.C. § 2675(a); Celestine v. Mount Vernon Neighborhood Health Ctr., 403 F.3d 76, 82 (2d Cir. 2005). The statute provides that “[t]he failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant at any time thereafter, be deemed a final denial of the claim for purposes of this section.” 28 U.S.C. § 2675(a).

Drawing all inferences in favor of plaintiff, as the court must do at this stage, it appears that plaintiff filed an administrative tort claim on March 13, 2013 and has not received a final disposition of her claim for over six months. Therefore, her claim has been exhausted pursuant to the FTCA and can proceed in this court.

The Caption is deemed amended to name the United States as a defendant. The United

States Marshals Service is hereby directed to serve a summons and copy of the complaint without prepayment of fees upon the United States Attorney's Office for the Eastern District of New York.

The case is referred to the Honorable Steven M. Gold, United States Magistrate Judge, for pretrial supervision.

SO ORDERED.

/S/ Judge Allyne R. Ross

ALLYNE R. ROSS
United States District Judge

Dated: November 22, 2013
Brooklyn, New York

SERVICE LIST:

Plaintiff

Fatima Mursalova

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Jersey City, NJ 07306